

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ALONZO SMITH,) Docket No. 16 C 3404
)
Plaintiff,)
)
vs.)
)
JON BURGE, et al.,) Chicago, Illinois
) January 24, 2018
Defendants.) 3:00 o'clock p.m.

EXCERPT OF PROCEEDINGS - EVIDENTIARY HEARING
BEFORE THE HONORABLE AMY J. ST. EVE

APPEARANCES:

For the Plaintiff: PEOPLE'S LAW OFFICES
BY: MR. G. FLINT TAYLOR, JR.
MS. JOEY L. MOGUL
1180 North Milwaukee Avenue
Chicago, Illinois 60622

For Defts. Shines, REITER BURNS, LLP
Needham, Hillard, Daley BY: MR. TERRENCE M. BURNS
& Estate of Leroy Martin: MR. PAUL A. MICHALIK
311 South Wacker Drive, Suite 5200
Chicago, Illinois 60606

Also Present: MS. SUZANNE STRATER, Law Clerk
DR. ERIC TERMAN

Court Reporter: MR. JOSEPH RICKHOFF
Official Court Reporter
219 S. Dearborn St., Suite 1232
Chicago, Illinois 60604
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PROCEEDINGS RECORDED BY
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1 THE WITNESS: Certainly. Thank you.

2 (Brief recess.)

3 THE COURT: So, I have thoughts on this and can
4 preview where I am going. I have read everything. We have
5 been living with this for a while. It is time to move on. If
6 you want to make any arguments or make any comments to me,
7 first, you can. I am inclined to tell you what I am thinking
8 and, then, work together toward where we are going.

9 I am not hearing any --

10 MR. BURNS: I'm amenable to that.

11 THE COURT: -- strong opposition to that.

12 Ms. Mogul, is that an opposition? Is the look to
13 Mr. Taylor an opposition?

14 MS. MOGUL: No, your Honor. I mean, I understand. I
15 know you've read everything. And, so, I don't want to repeat
16 it. I think we would like to hear your thoughts.

17 THE COURT: Okay.

18 So, here is where I am going, based on my review of
19 everything. The standard is good cause, and you have moved to
20 not have a deposition go forward for good cause. You do not
21 meet that standard, in my view. However, you also do not meet
22 what plaintiffs have been advocating -- to sit for a
23 traditional seven-hour deposition, or however many hours.

24 This is where I am going -- and I want your input,
25 and I am hoping that we can work together towards something.

1 I found Dr. Hanlon incredibly experienced, credible,
2 competent. There were no biases there. I did not get the
3 sense he was trying to come out one way or the other. He
4 gave, in my view, reliable opinions and with no bias. I have
5 so many witnesses, experts come in with a bias leaning. I did
6 not get that sense at all, including because he did not opine
7 on exactly what you wanted him to opine on, Mr. Burns. He did
8 not say he was not able to give oral statements. He said he
9 cannot do it in the traditional manner.

10 In light of everything -- the medical evidence I
11 reviewed, Dr. Hanlon's testimony, the results of the
12 neuropsychological test scores, the fact that Mr. Daley still
13 sits on the Board of Directors of Coca-Cola, he is listed as
14 Executive Chairman for Tur Partners, he is Of Counsel at
15 Katten -- I have your latest affidavit. Whether this other
16 partner accompanies him wherever he goes or not, the fact is
17 he is out meeting with clients or doing other events for
18 Katten where I am sure he is speaking to people and not just
19 silently coming along and letting the other partner talk for
20 him.

21 But in light of the testimony of Dr. Hanlon and the
22 restrictions, this is where my thinking is and this is where I
23 am hoping that you can reach agreement: That Mr. Daley should
24 be questioned in a deposition setting. Where that takes
25 place, who else is present besides the lawyers and for how

1 long of periods we go are all open questions.

2 Some type of written questions or at least topic
3 areas should be provided in advance, but the plaintiffs have
4 the opportunity and the right to be able to ask spontaneous
5 follow-up and not to have to give all questions in advance.

6 I think it is fair to require you to turn over some
7 form of written questions/information/topics in some level of
8 detail -- not just "Jon Burge"; with some level of detail --
9 for Mr. Daley, to assist in getting reliable answers from him,
10 for the reasons Dr. Hanlon explained, in advance of his
11 testimony.

12 I am only giving these guidelines or outline at the
13 moment for deposition testimony. Whether this is admissible
14 at trial is a whole separate question that we will get to at
15 the appropriate point.

16 And here is something else I want to throw out for
17 your consideration. This will not all take place in one
18 event. How long the first session should be, I want to talk
19 to you about and get your input. And I am hoping with this
20 guidance you can actually reach agreement; and, if not, I will
21 tell you.

22 But I am hoping that you can consult with the
23 doctors, whoever you need to consult with, and reach agreement
24 on what the guidelines should be with what I have just given
25 you.

1 But in light of what I have heard, I am going to
2 want, after that first day, before there is a second day --

3 MS. MOGUL: Right.

4 THE COURT: -- to view -- at a minimum, view -- the
5 video.

6 MS. MOGUL: Right.

7 THE COURT: The other option is for me to attend the
8 deposition, so that I can make an assessment about
9 reliability. I am not a physician, but I have seen --

10 MR. TAYLOR: You played one --

11 (Laughter.)

12 MS. MOGUL: Well, you've watched more testimony than
13 most.

14 THE COURT: I have, yes, presided over, I think, 130
15 trials, and God only knows how many thousands of witnesses
16 have testified.

17 So, I will want to see his testimony, either live or
18 via video, after that first day to make a further assessment
19 -- if I think he is giving reliable answers or if they are
20 reliable enough to go to a second day or if maybe we change
21 the parameters after that first day.

22 MR. BURNS: Are you willing to attend?

23 THE COURT: I am --

24 MR. BURNS: Not a seven-hour deposition, of course.
25 That, I assure you.

1 THE COURT: Well, I do not think he is capable of a
2 seven-hour.

3 MS. MOGUL: And we proposed doing it at one- or
4 two-hour increments. We don't have an issue with that at all.

5 THE COURT: I know it is highly unusual and I do not
6 know that it has ever happened before, but for -- I am willing
7 to attend if there is no objection to my attending. That
8 would certainly be one factor. And I am willing to attend as
9 an observer --

10 MR. BURNS: No, I understand.

11 THE COURT: -- not as a --

12 MR. BURNS: Sure, the referee of question and answer.

13 THE COURT: Right.

14 MR. BURNS: I'm concerned -- we expressed in our
15 motion to begin with that, I mean, deposition -- if we are to
16 accept what we've learned through the medical, as well as what
17 we've learned through him, videotaping it, preserving that
18 serves only really to embarrass him. I mean -- and that's why
19 I think if you're willing to do it, I would prefer we do it in
20 that manner.

21 THE COURT: And this will be under seal. Nothing can
22 happen with that video deposition without further order of the
23 Court.

24 And I do not think you are here to embarrass --

25 MS. MOGUL: No, and --

1 THE COURT: -- him.

2 And somebody will be in lots of trouble if there is a
3 leak of that deposition. I do not think that is anybody's
4 intention, though.

5 MS. MOGUL: As we put in our motion -- our
6 response -- we're willing to put it under seal. Our only --
7 and to be honest, have considered foregoing the video. We're
8 just concerned, though, that depending on when this goes to
9 trial, if we need that testimony, we want to preserve it via
10 video. That's the only reason why. And, as we noted,
11 potentially to give to you, your Honor, in case there's issues
12 between the deps.

13 So, at this point, we're happy -- we're fine and
14 we're willing to proceed under seal for sure.

15 THE COURT: Okay.

16 So, that is my guidance to you. What I would like
17 you to do is see if you can work out the details with the
18 guidance I have given you, including whether there is an
19 objection to my attending.

20 I think it would be helpful for me to attend to
21 observe him.

22 MR. BURNS: I don't have an objection to that.

23 MS. MOGUL: We don't either. I guess -- well, I
24 don't think we do.

25 MR. TAYLOR: Well, no, we don't.

1 MS. MOGUL: We would actually think about doing it
2 here, if that would be convenient for you. The only issue is
3 could we videotape it if it was here.

4 THE COURT: I do not know if we can videotape it.

5 Location, I want you to talk about that to see if
6 there is a better setting that might be --

7 MS. MOGUL: Okay.

8 THE COURT: -- where you might get -- where you think
9 you might get -- more reliable answers.

10 MS. MOGUL: Okay.

11 THE COURT: I do not know if you can do videotaping.

12 If it is here, I worry a little bit more about the public
13 aspect of it, if he is coming into the courthouse, that --

14 MR. BURNS: Appreciate that concern.

15 THE COURT: I know we want to keep this under seal,
16 but I am sensitive to that.

17 I know I have video capabilities. I do not know
18 about taping in the courtroom. We would have to -- Joe can
19 look into that.

20 MR. TAYLOR: Well, we can find a neutral site.

21 THE COURT: Yes, a neutral site. I do not know if it
22 is better if he is in a more comfortable setting. So, I am
23 willing to work with you on that.

24 But that is my proposal.

25 MR. BURNS: What do you suggest, then, as far as

1 coming back to you?

2 THE COURT: I would like you to talk about this and
3 come back in a week --

4 MR. BURNS: Okay.

5 THE COURT: -- with your, hopefully, agreed proposal.
6 If you cannot agree, then I will tell you. But I am hoping I
7 have given you enough guidance that you can agree on where.

8 MS. MOGUL: Okay.

9 MR. TAYLOR: Okay.

10 MS. MOGUL: Well, we are back here on Monday. Is it
11 possible that we could try to get this done by Monday?

12 THE COURT: That would be ideal if you can do it by
13 Monday.

14 MR. BURNS: Tomorrow, after a hearing, I'm flying to
15 Dallas and not coming back until Sunday night. If we could
16 extend a couple more days beyond that --

17 MS. MOGUL: That's fine. Okay.

18 MR. BURNS: -- at least at a minimum.

19 MS. MOGUL: That's fine.

20 THE COURT: Why don't you tell me where you are on
21 Monday. At the latest, I would like to have it by next
22 Thursday. I mean, you can come back if you are not ready on
23 Monday, just the --

24 MR. BURNS: Sure. I mean, we'll get something
25 preliminary to you, Judge.

1 THE COURT: We will have a sidebar on Monday on our
2 regular status and you can tell me where you are. There are
3 not a lot of details to fill in, because I think I have given
4 you enough guidance; but, I am hoping that you can work out
5 some of these -- the specifics -- about how long each session
6 should be, format of written-type questions in advance.

7 I am not going to require you to submit every written
8 question you are going to ask. But I do think, from what
9 Dr. Hanlon said, it would be helpful to have some meat on the
10 bones given to Mr. Daley in advance, in hopes of getting more
11 reliable information.

12 And we may have the first day of deposition and say
13 scrap it. You may all agree to. We may have the first day of
14 deposition and say, we got a lot more than we thought; we can
15 proceed sooner than we thought or go longer next time. This
16 will be a little bit fluid.

17 MR. BURNS: That's fair.

18 Judge, I know currently there was -- what? --
19 requests to admit that were sent out to all defendants. That
20 would include him. Can we defer those until we get this
21 resolved?

22 THE COURT: Let's defer those until we get this
23 resolved.

24 MR. BURNS: Okay.

25 THE COURT: I do not see --

1 MS. MOGUL: Okay, let me say this. Those are the
2 kind of requests to admit that are really more directed to
3 counsel than they are to Mr. Daley. It's about medical
4 records and foundational requirements and the details --

5 THE COURT: We are only deferring them until next
6 week.

7 MS. MOGUL: Okay. That's fine.

8 THE COURT: So, you can defer that --

9 MR. BURNS: Thank you.

10 THE COURT: -- until we meet next week.

11 So, we will have our regular status on Monday --

12 MS. MOGUL: Yes.

13 THE COURT: -- if that is the day you tell me it is.

14 I am granting the motion, in part, and denying it, in
15 part, along the lines that I have just told you, with the
16 details to be filled in, hopefully, by agreement; and, if not,
17 I will fill them in. But lawyers are always happier when it
18 is by agreement than when you are told.

19 MR. TAYLOR: And so are Judges, right?

20 THE COURT: I do not mind. I will tell you. But I
21 am trying to do what is best for the case. You know more of
22 some of these intricacies than I do.

23 MR. BURNS: All right. Then we will have a
24 preliminary report by Monday, and then certainly, I think you
25 said, by Thursday we will have something fine line.

1 THE COURT: Yes. I will have you come back on -- we
2 will talk about it on Monday, but I will have you come back if
3 Thursday works for everybody.

4 MS. MOGUL: Okay.

5 Can you just give me -- right now we do have a
6 deposition that may be proceeding in this case on Monday --
7 Thursday. Can you just give me a time when you would like us
8 back and I'll rearrange the dep around that.

9 THE COURT: It can be Wednesday, if that is better
10 for you.

11 MS. MOGUL: Wednesday is wide open.

12 THE COURT: January 31st.

13 MR. BURNS: I'll do whatever, Judge.

14 THE COURT: We will do 8:45 --

15 MR. BURNS: I have no excuse. I'm in town.

16 MS. MOGUL: Okay.

17 THE COURT: -- on January 31st.

18 MS. MOGUL: Thank you.

19 THE COURT: Did you file this latest affidavit?

20 MR. MICHALIK: No.

21 MR. BURNS: No.

22 THE COURT: I want to make sure you are not giving me
23 the only --

24 MR. BURNS: No.

25 MR. MICHALIK: No.

1 THE COURT: Okay. That is not the original.

2 MR. BURNS: No.

3 THE COURT: So, you should file that under seal so we
4 have it in the record.

5 MR. BURNS: All right, Judge.

6 THE COURT: You got a copy?

7 MS. MOGUL: We did.

8 MR. TAYLOR: Yes, we did.

9 THE COURT: All right.

10 So, I will see you on Monday. We will touch base,
11 see where you are. Then I will have you come back on January
12 31st at 8:45 and --

13 MR. BURNS: Go from there.

14 THE COURT: -- to the extent you have not finalized
15 the details, we will finalize them.

16 MS. MOGUL: Okay. Great.

17 Thank you.

18 MR. BURNS: Thank you, your Honor. Appreciate all
19 the time.

20 THE COURT: Thank you.

21 MR. MICHALIK: Thank you.

22 * * * * *

23 I certify that the foregoing is a correct excerpt from the
24 record of proceedings in the above-entitled matter.

25 /s/ Joseph Rickhoff
Official Court Reporter

March 28, 2018